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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,909	07/21/2003	Scott L. Hamilton	716-01-PA	5355
22145	7590	01/17/2006	EXAMINER	
KLEIN, O'NEILL & SINGH 2 PARK PLAZA SUITE 510 IRVINE, CA 92614			TRAN, HANH VAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/623,909

Applicant(s)

HAMILTON, SCOTT L.

Examiner

Hanh V. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 12-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. This is the First Office Action on the Merits from the examiner in charge of this application.

#### ***Election/Restrictions***

2. Applicant's election without traverse of Species II in the reply filed on 11/2/2005 is acknowledged.
3. Claims 6-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/2/2005.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1-5, 12-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, line 8, the limitation "configured to bias the latching assembly toward to the position" is vague, thus indefinite for failing to clearly define the metes and bounds of the claimed invention; it is not clear which position the claim is referring to. Claims 12 and 13, there is an inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claims unclear. The preamble clearly indicates that a subcombination is being claimed, e.g., "an equipment shelf mounting bracket assembly for use in combination with an equipment rack of a type that includes...., the rails having a

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plurality of through-apertures...., the mounting bracket comprising” This language would lead the examiner to believe that the applicant intends to claim only the subcombination of a “mounting bracket assembly”, the equipment rack and its elements being only functionally recited. This presents no problem as long as the body of the claims also refers to the equipment rack and its elements functionally. The problem arises when the equipment rack and/or its elements is positively recited, such as in claim 13. The examiner cannot be sure if applicant’s intent is to claim merely the mounting bracket assembly or the mounting bracket assembly in combination with the equipment rack. Applicant is required to clarify what the claim is intended to be drawn to, and the language of the claim be consistent with the intent. For the purpose of this examination, the examiner is considering that the claims are drawn to the combination of the bracket mounting assembly and the equipment rack.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by USP 6,948,691 to Brock et al.

Brock et al discloses a bracket assembly comprising all the elements recited in the above listed claims including, such as shown in Fig 1, a bracket having a longitudinal main portion and an end portion 26 substantially perpendicular to the main portion; a latching assembly 40 slidably coupled to the main portion of the bracket and movable between a first position proximate the end portion of the bracket and a second position away from the end portion of the bracket; an elastic member 54 coupled to the main portion of the bracket and the latching assembly and configured to bias the latching assembly toward the first position, wherein the end portion of the bracket has at least one tab 62 that is configured to engage with a rail, the first end of the latching assembly includes a latch projection 59, such as shown in Fig 2, configured to securing the latching assembly to the rail when the latching assembly is in the first position, and a flange 58 coupled to the latch for releasing the latch from the rail by movement of the latching assembly toward the second position, the latch projection is configured to sit within an opening in the rail to secure the latching assembly to the rail, and the elastic member 54 increases in length as the latching assembly moves from its first position to its second position.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 12-13, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,659,577 to Lauchner in view of Brock.

Lauchner discloses an equipment shelf mounting bracket assembly in combination with an equipment rack of a type that includes opposing pairs of vertical front and rear rails, the rails having a plurality of through-apertures 56 arranged in groups of three for positioning the shelf at a selected height within the rack, the mounting bracket comprising: a track assembly, including a pair of elongated, U-shaped, inner and outer tracks, the inner track nesting within the outer track for relative longitudinal telescopic sliding movement therein; means for clamping the inner track to the outer track at a selected length of the track assembly and thereby preventing relative longitudinal movement between the two tracks; a right-angle flange 34,38 disposed at each of a respective one of a rear end of the inner track and a front end of the outer track; a pair of elongated, axially symmetrical alignment pins 44 mounted on each of the flanges, each pin 44 having a center and being arranged in inward-facing opposition to a corresponding pin on the opposite flange, and with the centers of the pins in respective ones of the pairs being spaced at a distance that is equal to the

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distance between respective centers of a first and a third one of the rail apertures 56 in a selected group of three thereof; a latching assembly 94 having a right angle flange at first end thereof, wherein each of the rail apertures comprises a large round opening, and wherein each alignment pin 44 comprises, such as shown in Fig 8, a pair of tandem, concentric cylinders, a smaller one of the cylinders having a conical leading tip and a larger one of the cylinders having a shoulder tapering into the smaller cylinder. The different being that Lauchner does not disclose the latching assembly including a carrier slidably captivated on the outer track for relative longitudinal sliding movement thereon, and means for resiliently urging the flange of the carrier toward the front end flange of the outer track.

Brock et al discloses a bracket assembly comprising all the elements recited in the above listed claims including, such as shown in Fig 1, a bracket having a longitudinal main portion and an end portion 26 substantially perpendicular to the main portion; a latching assembly 40 including a carrier slidably captivated on the outer track for relative longitudinal sliding movement; an elastic member 54 coupled to the main portion of the bracket and the latching assembly and configured to bias the latching assembly toward the first position, wherein the end portion of the bracket has at least one tab 62 that is configured to engage with a rail, the first end of the latching assembly includes a latch projection 59, such as shown in Fig 2, configured to securing the latching assembly to the rail when the latching assembly is in the first position, and a flange 58 coupled to the latch for releasing the latch from the rail by movement of the latching assembly toward the second position, the latch projection is configured to sit

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within an opening in the rail to secure the latching assembly to the rail, and the elastic member 54 increases in length as the latching assembly moves from its first position to its second position; wherein the latch assembly provides a secured and quick mounting and removal of the bracket assembly relative to the rail. Therefore, it would have been obvious to modify the structure of Lauchner by providing the latch assembly with a carrier slidably captivated on the outer track for relative longitudinal sliding movement thereon, and means for resiliently urging the flange of the carrier toward the front end flange of the outer track in order to provide a secured and quick mounting and removal of the bracket assembly relative to the rail, as taught by Brock et al, since both teach alternate conventional bracket mounting assembly structure, used for the same intended purpose, thereby providing structure as claimed.

#### ***Allowable Subject Matter***

11. Claims 14-19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dobler et al, Mayer, Mammoser et al, Bueley et al, Abbott, Kofstad, and Ross et al all show structures similar to various elements of applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-



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6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HVT  
January 9, 2006

**Hanh V. Tran**  
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